



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201511036

DEC 18 2014

Uniform Issue List: 408.03-00

T:EP:RA:T2

Legend:

Decedent A =

Taxpayer B =

Will =

Trust C =

Trust D =

IRA E =

IRA F =

IRA G =

IRA H =

IRA I =

IRA J =

IRA K =

IRA L =

IRA M =

IRA N =

Date 1 =

Dear Ms. :

This is in response to your request dated December 9, 2013, as supplemented by correspondence dated March 28, 2014 and April 16, 2014, submitted on your behalf by your authorized representative, in which you request a ruling that IRA E, IRA F, IRA G, IRA H, IRA I, IRA J, IRA K, IRA L, IRA M, and IRA N (collectively, "IRA E-N") will not be treated as inherited IRAs within the meaning of section 408(d) of the Internal Revenue Code (the "Code") with respect to you, and that you be permitted to transfer the proceeds of IRA E-N into one or more IRAs maintained in your own name.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Decedent A died testate on Date 1, at age 78. Decedent A was married to Taxpayer B on the date of his death. Decedent A maintained ten individual retirement accounts, IRA E-N. Decedent A designated his estate as the beneficiary of each of IRA E-N.

Decedent A executed Will prior to his death. Article 2 of Will provides that all of Decedent A's tangible personal property be given to Taxpayer B. It further provides that the residue of Decedent A's estate be given to Trust C. Taxpayer B was nominated executor of Decedent A's estate pursuant to Will. Pursuant to Article 7.1 of Trust C, Taxpayer B became the sole trustee of Trust C upon Decedent A's death.

Trust C provides that upon Decedent A's death, and after payment of death taxes, expenses and debts of Decedent A, all property in Trust C passes to Trust D, a Power of Appointment Trust. Acting as trustee of Trust C, Taxpayer B represents that sufficient assets other than IRA E-N are available to pay all death

taxes, expenses and debts of Decedent A. Pursuant to written actions taken by Taxpayer B, all rights in IRA E-N have been transferred to Trust D.

Trust D, by its terms, is required to pay all trust income to Taxpayer B not less frequently than annually, and to distribute to Taxpayer B so much of the trust principal as the trustee deems proper "for the comfort, welfare and happiness" of Taxpayer B. Trust D further grants Taxpayer B the right to withdraw any amount of trust principal upon written demand to the trustee of Trust D.

Taxpayer B, as beneficiary of Trust D, has made a written demand to receive all trust principal of Trust D, consisting of IRA E-N. Taxpayer B has also established one or more IRAs in her own name to which she transferred a portion of IRA E-N. She wants to transfer the remaining proceeds of IRA E-N to one or more IRAs set up in her name.

Based on the facts and representations, you requested the following rulings:

1. IRA E-N will not be treated as inherited IRAs within the meaning of section 408(d) of the Code with respect to Taxpayer B.
2. Taxpayer B was entitled to make a transfer of a portion of IRA E-N.
3. Taxpayer B is eligible to transfer a distribution of the remaining portions of IRA E-N into one or more IRAs set up and maintained in her own name, as long as the transfer of such distribution occurs no later than the 60th day from the date said distribution is received from IRA E-N respectively.
4. Taxpayer B's transfer of a portion of IRA E-N, and her transfer of the remaining portions of IRA E-N, will not be treated as taxable distributions under section 408(d)(1) of the Code as long as the transfer of such distribution occurs no later than the 60th day from the date said distribution is received from IRA E-N respectively.

With respect to your ruling requests, Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if –

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3)(A) of the Code does not apply to any amount received by an individual from an IRA if at any time during the one year period ending on the day of such receipt the individual received any other amount from an IRA that was not includible in gross income because of section 408(d)(3)(A).

Section 408(d)(3)(C)(i) of the Code provides, in summary, that the rollover rules of section 408(d)(3) do not apply to inherited IRAs.

Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA obtained by an individual, other than the IRA owner's spouse, as a result of the death of the IRA owner.

Section 1.408-8 of the Income Tax Regulations, Question and Answer 5 ("Q&A 5") provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest as a beneficiary in an individual's IRA as the spouse's own IRA. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust.

In this case, Decedent A designated his estate as the beneficiary of IRA E-N. Article 2 of Will designates that all tangible property be given to Taxpayer B and the residue of Decedent A's estate be transferred to Trust C. Trust C provides that all Trust C property after payment of death taxes, expenses and debts of the decedent passes to Trust D. IRA E-N were transferred to Trust D. Trust D provides that Taxpayer B has the right to all trust income and, upon written demand, all trust principal of the assets held in Trust D. Taxpayer B has made a written demand to be entitled to all trust principal held by Trust D.

Through Taxpayer B's written demand, Trust D intends to distribute the proceeds of IRA E-N to Taxpayer B as beneficiary of Trust D, and Taxpayer B intends to transfer the distribution to one or more IRAs maintained in her own name.

Generally, if the proceeds of a decedent's IRA are payable to a trust, and are paid to the trustee of the trust, who then pays them to the decedent's surviving spouse as the beneficiary of the trust, the surviving spouse is treated as having received the IRA proceeds from the trust and not from the decedent. Accordingly, such surviving spouse, in general, is not eligible to roll over the distributed IRA proceeds into her own IRA.

However, the general rule will not apply where the surviving spouse is the sole trustee of the decedent's trust and has the sole authority and discretion under trust language to pay the IRA proceeds to herself. The surviving spouse may then receive the IRA proceeds and roll over the amounts into an IRA set up and maintained in her name.

Therefore, with respect to your ruling requests, we conclude as follows:

1. IRAs E-N will not be treated as inherited IRAs within the meaning of section 408(d) of the Code with respect to Taxpayer B.
2. Taxpayer B was entitled to make a transfer of a portion of IRA E-N into one or more IRAs set up and maintained in her own name.
3. Taxpayer B is eligible to transfer a distribution of the remaining proceeds of IRA E-N into one or more IRAs set up and maintained in her own name, as long as the transfer of such distribution occurs no later than the 60th day from the date said distribution is received from IRA E-N respectively.
4. Taxpayer B's transfer of the remaining portions of IRA E-N will not be treated as a taxable distribution under section 408(d)(1) of the Code as long as the transfer of such distribution occurs no later than the 60th day from the date said distribution is received from IRA E-N respectively, and Taxpayer B has not within the one year period on or before the date of such distribution received any other amount from IRA E-N that was not includible in her gross income because of section 408(d)(3)(A).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described in this ruling under the provisions of any other section of either the Code or regulations which may be applicable.

This letter is based on the assumption that that IRA E-N met the requirements of section 408 of the Code at all relevant times, and that Will, Trust C and Trust D are all valid under applicable state law. It also assumes that any rollover IRA established by Taxpayer B will also meet the requirements of section 408 at all relevant times.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact _____ at _____.
Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Jason E. Levine, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: _____, CPA